

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARCO T. BARBANTI,

Plaintiff,

v.

QUALITY LOAN SERVICE CORP., a
California Corporation; EDDIE
RAMIREZ AND JANE DOE RAMIREZ,
Husband and Wife; BANK OF NEW
YORK, a New York corporation, as
Trustee, Pursuant to the Terms
of That Certain Pooling and
Servicing Agreement Dated as of
11/1/96 Related to Metropolitan
Asset Funding Inc., Mortgage
Pass-through Certificates Series
1996-a; OCWEN LOAN SERVICING,
LLC, a Delaware corporation;
GINA JOHNSON AND JOHN DOE
JOHNSON,

Defendants.

NO. CV-06-0065-EFS

**ORDER CONSTRUING QUALITY LOAN
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT AS A MOTION TO DISMISS
AND DENYING IN PART, DENYING AS
MOOT IN PART, AND GRANTING IN
PART SUCH MOTION; AND GRANTING
PLAINTIFF'S MOTION TO STRIKE
PORTIONS OF DEFENDANTS' BRIEF IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

A telephonic hearing was held in the above-captioned matter on July 5, 2006. Plaintiff was represented by Timothy Durkop. Matthew Cleverly appeared on behalf of Defendants Quality Loan Service Corp. and Eddie Ramirez (hereinafter collectively, "Quality Loan Defendants"), while Robert Wayne Norman Jr. appeared on behalf of Bank of New York, Ocwen Loan Servicing, LLC, and Gina Johnson. Before the Court were Quality Loan Defendants Motion for Summary Judgment (Ct. Rec. 18) and

1 Plaintiff's Motion to Strike Portions of Defendants' Brief in Support of
2 Motion for Summary Judgment (Ct. Rec. 40). After reviewing the
3 submitted material and applicable legal authority and hearing oral
4 argument, the Court is fully informed. The Court grants Plaintiff's
5 motion and denies in part, denies as moot in part, and grants in part
6 Quality Loan Defendants' motion, which was construed as a motion to
7 dismiss in its entirety.

8 **Defendant Quality Loan Service Corporation and Eddie Ramirez' Motion**
9 **for Summary Judgment (Ct. Rec. 18)**

10 Quality Loan Defendants ask the Court to dismiss Plaintiff's
11 lawsuit on the grounds that he does not have standing to obtain the
12 requested relief and because he has not adequately pled the causes of
13 action and cannot prove facts to support his causes of action. Given
14 that discovery was not permitted to proceed until the parties conferred
15 in advance of the July 5, 2006, Scheduling Conference, as is provided
16 under Federal Rule of Civil Procedure 26(f), the Court construes Quality
17 Loan Defendants' motion as a motion to dismiss in its entirety; Quality
18 Loan Defendants are free to renew their motion for summary judgment once
19 discovery has begun.

20 Plaintiff opposes the motion, contending that he has standing to
21 bring this lawsuit and has adequately pled his causes of action.
22 Plaintiff also asks the Court to strike a portion of Quality Loan
23 Defendants' moving memorandum. As explained below, the Court finds
24 Plaintiff has standing and, when viewing the motion as a Motion to
25 Dismiss, finds Plaintiff alleged sufficient facts to survive on all of
26 his causes of action, except Wrongful Interference with Contractual
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Relationship; however, Plaintiff is given leave to file an amended complaint within three weeks of entry of this Order. The Court also grants Plaintiff's Motion to Strike Portions of Defendants' Brief in Support of Motion for Summary Judgment.

A. Background

This litigation involves real property commonly known as 5711 N. Division Spokane, WA 99207 (hereinafter, "the Property"). (Def. Statement of Facts 1.) The real property is encumbered by a real estate contract; a dispute exists as to who holds a purchaser's interest.

On April 23, 1993, a Deed of Trust was recorded in Volume 1419, Page 1130 of the Official Records of Spokane County, Washington. (Decl. Owen Ex. C.) The Deed of Trust states that on March 25, 1993, Brian and Lisa Hooper (Grantor) entered into an agreement involving this Property and the Beneficiary was Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan Mortgage."):

This deed is for the purpose of securing performance of each agreement of grantor herein contained, and payment of the sum of One hundred forty three thousand and no/100's Dollars, (\$143,000.00) with interest, in accordance with the terms of a promissory note of even date herewith payable to Beneficiary or order, and made by Grantor, and all renewals, modifications and extensions thereof, and also such further sums as may be advanced or loaned by Beneficiary to Grantor, or any of their successors or assigns, together with interest thereon at such rate as shall be agreed upon.

(Decl. Owen Ex. C at 1: "Hooper-Metropolitan Mortgage Deed of Trust")

On May 1, 1996, the Hoopers and Mr. Barbanti entered into a real estate contract for the Property ("the Hooper-Barbanti contract"). This contract was recorded on May 24, 1996, under Auditor's File No. 9605240463 in Spokane County, Washington. The Hooper-Barbanti contract is held by Allego Escrow Services under account 15208. (Decl. Barbanti

¶ 2.) This contract was apparently seller-financed as Mr. Barbanti provides monthly payments to the Hoopers. (Decl. Barbanti ¶ 2.)

On February 10, 1997, Metropolitan Mortgage assigned its 1993 Hooper-Metropolitan Mortgage Deed of Trust to The Bank of New York. (Decl. Owen.)

On July 21, 2003, Mr. Barbanti and Royal Pottage Enterprises entered into a Quitclaim Deed through which Mr. Barbanti: "convey[ed] and quit claim[ed] to ROYAL POTTAGE ENTERPRISES, INC., a Delaware corporation, the following described real estate [the Property], . . . together with any interest therein which the Grantor may hereafter acquire." (Decl. Glagowski Ex. A.: "Barbanti-Royal Pottage Enterprises Quitclaim Deed"). This Quitclaim Deed was recorded in the Official Records of Spokane County as Instrument Number 4929722.

On August 24, 2005, Defendant Quality Loan issued a Notice of Intent to Forfeit (NOIF) addressed to Mr. Barbanti, stating:

You are hereby notified that the Seller [The Bank of New York] has declared you in default on the obligation under the Real Estate Contract dated 5/1/1996 by and between BRIAN R. HOOPER AND LISA M. HOOPER, as sellers and MARCO T. BARBANTI, as purchaser, recorded on 5/24/1996

(Def. Statement of Fact 4; Dec. Owen Ex. A.; Decl. Barbanti.) This NOIF advised that reinstatement monies in the amount of \$49,249.85 could be tendered to Quality Loan Service Corp. in order to remedy this default. (Decl. Owen Exhibit A at 4.) The NOIF is signed by Eddie Ramirez on behalf of Quality Loan Service Corp. "as Agent for the Seller." (Decl. Owen Ex. A at 5.)

Quality Loan Defendants issued a Declaration of Forfeiture (DOF) on January 11, 2006, with the Spokane County Auditor's Office under file

1 number 5329760. (Plaintiff's Statement of Fact 6; Decl. Owen Ex. B).)
2 Mr. Barbanti claims he never received a copy of the DOF from any of the
3 Defendants and to the best of his knowledge a copy of the DOF was not
4 posted on the Property. (Decl. Barbanti ¶ 5.)

5 Quality Loan Defendants concede the forfeiture was conducted in
6 error because The Bank of New York never had the seller's interest in
7 the Hooper-Barbanti contract.¹ The parties dispute whether the process
8 of forfeiture and the forfeiture itself violated the Washington Real
9 Estate Contract Forfeiture Act, constituted the unauthorized practice of
10 law, violated the Consumer Protection Act and Collection Agency Act, and
11 involved the slander of title or the wrongful interference with
12 contractual relations.

13 **B. Standing**

14 Quality Loan Defendants ask the Court to find that Plaintiff lacks
15 standing to sue because Plaintiff suffered no injury-in-fact with
16 reference to the allegations in the Complaint since he did not hold any
17 title interest in the Property during the forfeiture proceedings because
18 he quitclaimed his interest to Royal Pottage Enterprises, Inc.² In
19 response, Plaintiff submits he alleged an injury-in-fact because the
20

21 ¹ Yet, surprisingly in their reply state, "Plaintiff does owe a
22 debt to Defendant Bank of New York and he is over twenty-nine months
23 delinquent on that debt." (Ct. Rec. 64 at 12 ll. 3-4.)

24 ² In Quality Loan Defendants' reply, they provide more legal
25 authority and arguments to support their position that Plaintiff lacks
26 standing. In light of the new arguments presented in the reply,
27 Plaintiff was allowed to file a supplemental response.

1 Barbanti-Royal Pottage Enterprises Quitclaim Deed only transferred his
2 interest *in* the Property, but did not transfer his contractual rights
3 under the Hooper-Barbanti contract, such as his obligation to make
4 monthly payments to the Hoopers or his other obligations as purchaser.
5 Plus, Plaintiff states R.C.W. § 61.30.140 provides him with standing to
6 sue under the Washington Real Estate Contract Forfeiture Act.

7 1. Standing: in general

8 A plaintiff must have standing to bring suit in order to satisfy
9 the "case and controversy" requirement of Article III. *Assoc. of Data*
10 *Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152 (1969). In
11 order to have standing, a plaintiff must allege: (1) the plaintiff has
12 suffered an injury-in-fact, (2) the injury is fairly traceable to the
13 challenged action of the defendant, and (3) the injury is likely to be
14 redressed by a favorable decision." *Lortiz v. U.S. Ct. of Appeals for*
15 *the Ninth Cir.*, 382 F.3d 990, 992 (2004); *see also Simon v. E. Kent.*
16 *Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Satisfying the standing
17 requirements is vital because the court is without authority to rule on
18 substantive issues if standing is lacking and the case must be
19 dismissed. *Snake River Farmers' Ass'n, Inc. v. Dep't of Labor*, 9 F.3d
20 792, 795 (9th Cir. 1993).

21 In order to show an "injury-in-fact," the plaintiff must allege
22 sufficient facts to show that the injury is "actual or imminent, not
23 conjectural or hypothetical." *Lortiz*, 382 F.3d at 992 (quoting *Env'tl*
24 *Def. Ctr. v. Env't Prot. Agency*, 344 F.3d 832, 863 (9th Cir. 2003). The
25 Court finds finding Plaintiff alleged a sufficient injury-in-fact. The
26 Washington Supreme Court's decision in *Biehn v. Lyon*, 29 Wash. 2d 750
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(1948), supports Plaintiff's position that different types of property-related rights exist, such as both a contractual right and an interest in the property, and that a quitclaim deed does not transfer one's contractual rights under the real estate contract. Although there is a factual distinction between *Biehn* and the instant case given that Mr. Biehn was the individual *receiving* payments under a real estate contract, whereas Mr. Barbanti is the individual *making* payments under a real estate contract, the Court does not find that this distinction affects the Washington Supreme Court's holding that legal title and interests under a real estate contract are two distinct interests. This legal premise is supported by Washington hornbook law as well:

We know from section 9 of this chapter that the purchaser under a real estate installment contract (REK) has an "interest" in the land sold and that this interest is "real property." It follows that the purchaser has an interest in land that may be transferred or, more precisely in the terminology of land law, conveyed. We also know that the purchaser has contract rights. These rights, too, may be transferred, by assignment. Therefore, a complete transfer of the purchaser's interests should be in a form that qualifies as both a conveyance and a contract assignment. In this section we will consider two kinds of vendors' transfers, absolute transfers and transfers as security for an obligation.

18 WASH. PRACT. § 21.12 "Conveyance and mortgage by purchaser" (2006). Furthermore, the Washington Practice section on "Purchaser's interest" makes clear that, even though a purchaser has obligations under a real estate contract, the purchaser also has contract rights:

Obviously the purchaser in a real estate contract has contract rights. Whatever rights he has originate in the contractual agreement with the vendor. Though a typical real estate installment contract (REK) contains far more covenants by the purchaser than by the vendor, the purchaser's rights are certainly not insignificant. They include at least the vendor's covenant to give a fulfillment deed and usually some other covenants, such as a covenant to provide title insurance, a covenant as to the state of title, perhaps a

1 covenant for attorneys' fees if the purchaser (or the vendor)
2 prevails in a lawsuit arising out of the contract, and
possibly other vendor's covenants.

3 18 Wash. Practice § 21.9 (2006).

4 Accordingly, Mr. Barbanti had two separate interests created by the
5 Hooper-Barbanti Contract: (1) a personal contractual right and (2) an
6 interest in the Property. On the current record, the Court agrees with
7 Plaintiff that the Barbanti-Royal Pottage Enterprises Quitclaim Deed
8 only transferred Mr. Barbanti's interest in the Property but did not
9 affect his rights or responsibilities under the real estate contract.
10 The statutory section addressing the form and effect of a quitclaim deed
11 highlights that the quitclaim deed transfers one's interest in the
12 property/premises only:

13 Every deed in substance in the above form, when otherwise duly
14 executed, shall be deemed and held a good and sufficient
15 conveyance, release and quitclaim to the grantee, his heirs
16 and assigns in fee of all the then existing legal and
equitable rights of the grantor in the premises therein
described, but shall not extend to the after acquired title
unless words are added expressing such intention.

17 R.C.W. § 64.05.050 (emphasis added); see also *Muscatel v. Storey*, 56
18 Wash. 2d 635 (1960); *Ennis v. Ring*, 49 Wash. 2d 284 (1956).

19 Therefore, because Mr. Barbanti retained his rights/obligations
20 under the real estate contract, the Court finds he alleged a sufficient
21 injury-in-fact given that the forfeiture of the Hooper-Barbanti contract
22 resulted in the cancellation of Mr. Barbanti's rights in the contract
23 and all rights to the monies previously paid and improvements made. See
24 R.C.W. § 61.21.100. In addition, Plaintiff entered into a landlord-
25 tenant agreement and the forfeiture allegedly injured his
26 responsibilities as a landlord. The loss of an opportunity to engage in
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1 a business enterprise and the loss of funds spent in preparation for the
2 enterprise is sufficient to constitute an injury-in-fact. *Singleton v.*
3 *Wulff*, 428 U.S. 106, 113 (1975).

4 The Court also finds Mr. Barbanti's alleged injury is traceable to
5 Quality Loan Defendants' issuance of the NOIF and DOF. Also,
6 Plaintiff's injury is redressable by the Court as the wrongful
7 forfeiture can be set aside and damages, including exemplary damages per
8 R.C.W. § 61.30.150(2), can be awarded. For these reasons, the Court
9 **denies** Quality Loan Defendants' motion **in part**, finding Plaintiff has
10 standing to assert his causes of action (for Washington Real Estate
11 Contract Forfeiture Act see below).

12 2. Washington Real Estate Contract Forfeiture Act

13 Quality Loan Defendants argue Plaintiff does not have standing to
14 sue under the Washington Real Estate Contract Forfeiture Act because he
15 does not have an ownership interest in the Property. After reviewing
16 the Act, the Court finds Plaintiff does have standing to sue as he may
17 seek to set aside the forfeiture under R.C.W. § 61.30.140. Section
18 61.30.140 provides, in pertinent part:

19 (2) An action to set aside the forfeiture permitted by this
20 section may be commenced *only by a person entitled to be given*
21 *the required notices under RCW 61.30.040 (1) and (2).*

22 R.C.W. § 61.30.140 (emphasis added). Accordingly, central to the issue
23 of whether Plaintiff has standing to set aside the forfeiture is whether
24 he was entitled to be given notice under R.C.W. § 61.30.040(1) and (2).
25 Section 61.30.040 provides, in pertinent part:

26 (1) The required notices shall be given to each purchaser last
27 known to the seller or the seller's agent or attorney giving
28 the notice *and* to each person who, at the time the notice of
intent to forfeit is recorded, is the last holder of record of

1 a purchaser's interest. Failure to comply with this subsection
 2 in any material respect shall render any purported forfeiture
 based upon the required notices void.

3 (2) The required notices shall also be given to each of the
 following persons whose interest the seller desires to forfeit
 if the default is not cured:

4 (a) The holders and claimants of record at the time the
 notice of intent to forfeit is recorded of any interests
 5 in or liens upon all or any portion of the property
 derived through the purchaser or which are otherwise
 6 subordinate to the seller's interest in the property; and
 . . .

7
 8 (Emphasis added.) Under the terms of the statute, the determination of
 who constitutes a seller and a purchaser is essential to determining
 9 whether one has standing to sue under § 61.30.140.

10
 11 Section 61.30.010 provides definitions for Real Estate Contract
 Forfeiture Act terms, and in pertinent part states:

12
 13 (7) "Purchaser" means the person denominated in a real estate
 contract as the purchaser of the property or an interest
 therein or, if applicable, the purchaser's successors or
 14 assigns in interest to all or any part of the property,
 whether by voluntary or involuntary transfer or transfer by
 15 operation of law. . . .

16 . . .
 17 (9) "Seller" means the person denominated in a real estate
 contract as the seller of the property or an interest therein
 or, if applicable, the seller's successors or assigns in
 18 interest to all or any part of the property or the contract,
 whether by voluntary or involuntary transfer or transfer by
 operation of law. . . . However, "seller" does not include an
 19 assignee or any other person whose only interest or claim is
 in the nature of a lien or other security interest and does
 20 not include an assignee who has not been conveyed legal title
 to any portion of the property.

21
 22 Although neither party provided the Court with guidance as to how to
 23 assign "seller" or "purchaser" designations within the instant dispute,
 24 both the definition of "purchaser" and "seller" direct the Court to the
 25 "real estate contract." "'Real estate contract' means any written
 26 agreement for the sale of real property in which legal title to the
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1 property is retained by the seller as security for payment of the
2 purchase price. [It] does not include earnest money agreements and
3 options to purchase." R.C.W. § 64.04.010(1). Here, the parties agree
4 the real estate contract at issue is the Hooper-Barbanti Real Estate
5 Contract. The problem for Quality Loan Defendants is that The Bank of
6 New York does not constitute the "seller" under this real estate
7 contract.

8 The Bank of New York, through the Quality Loan Defendants,
9 instituted the forfeiture³ proceedings. The Bank of New York was
10 assigned Metropolitan Mortgage's interest in the Hooper-Metroplitan
11 Mortgage Deed of Trust in 1997. The Bank of New York was not assigned
12 any interest in the Hooper-Barbanti contract; accordingly, under the
13 Hooper-Barbanti contract, the Hoopers are the "Seller."

14 Regardless, under § 61.30.040(1) notices shall be sent to each
15 purchaser last known to the Seller. Washington Practice summarizes the
16 classes of parties who must receive notice:

- 17 1. Each purchaser known to the seller or to the seller's agent
18 or attorney, at the purchaser's last known address.
19 2. The last record holder of a purchaser's interest at the
20 time the notice of intent to forfeit is recorded.
21 3. Holders and claimants of record of subordinate liens at the

21 ³ "Forfeit" or "forfeiture" is defined as a:

22 means to cancel the purchaser's rights under a real estate
23 contract and to terminate all right, title, and interest in
24 the property of the purchaser and of persons claiming by or
25 through the purchaser, all to the extent provided in this
26 chapter, because of a breach of one or more of the
purchaser's obligations under the contract. A judicial
foreclosure of a real estate contract as a mortgage shall
not be considered a forfeiture under this chapter.

27 R.C.W. § 61.30.010(4).

1 time the notice of intent to forfeit is recorded.

2 4. Persons occupying the property at the time the notice of
intent to forfeit is recorded and whose identities are
reasonably discoverable.

3 1B WASH PRACT. § 77.30. Clearly, Mr. Barbanti the initial Purchaser under
4 the Hooper-Barbanti contract was entitled to notice. Quality Loan
5 Defendants submit, because Mr. Barbanti assigned his interest in the
6 legal title of the property to Royal Pottage Enterprises via a Quitclaim
7 deed, Royal Pottage Enterprises is the only party entitled to notice.
8 However, Quality Loan Defendants' argument fails to recognize that a
9 variety of parties are entitled to notice under § 61.30.040 - and Mr.
10 Barbanti was one of these parties given that he was the initial
11 purchaser and known to Quality Loan Defendants since the real estate
12 contract was recorded - and is evidenced by the fact that Mr. Barbanti
13 was sent a copy of the NOIF. Therefore, the Court finds Mr. Barbanti
14 may seek to set aside the forfeiture under § 61.30.140 and **denies in**
15 **part** Quality Loan Defendants' motion.

16
17 **C. Motion to Dismiss Causes of Action**

18 As discussed above, the Court treats Quality Loan Defendants'
19 motion as a motion to dismiss because the parties have not had an
20 opportunity to engage in any discovery. Accordingly, the Court analyzes
21 Quality Loan Defendants' requests under a dismissal standard.

22 1. Dismissal Standard

23 A cause of action should not be dismissed for failure to state a
24 claim "unless it appears beyond doubt that the plaintiff can prove no
25 set of facts in support of his claim which would entitle him to relief."

26 *Cal. Dump Truck Owners Assoc. v. Assoc. Gen. Contractors of Am.*, 562
27 F.2d 607, 614 (9th Cir. 1977) (citing *Conley v. Gibson*, 355 U.S. 41, 45

(1957)); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). When resolving a Federal Rule of Civil Procedure 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff, (2) accept all well-pleaded factual allegations as true, and (3) determine whether plaintiffs could prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996); *Integrated Res. Equity Corp. v. Founders Bank of Ariz.*, 74 F.3d 1246 (9th Cir. 1996). A claim should be dismissed where there is a "lack of cognizable legal theory" or "absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). If the court finds that the complaint is insufficient as plead, the court should provide plaintiff with an opportunity to amend the complaint unless the pleading "could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

2. Real Estate Contract Forfeiture Act, R.C.W. §§ 61.30 et seq.

Quality Loan Defendants submit Plaintiff (1) cannot present evidence that they violated R.C.W. §§ 61.30 et seq., (2) Plaintiff failed to file and serve the summons and complaint within sixty days, and (3) Plaintiff waived his right to protest the forfeiture action since he did not comply with R.C.W. §§ 61.30.070(2)(g) or 61.30.110(2).

First, as noted above, the Court is determining whether Plaintiff alleged sufficient facts to support a claim that Quality Loan Defendants violated R.C.W. §§ 61.30 et seq., and is not analyzing whether any genuine issues of material fact exist. The Court finds Plaintiff

1 alleged sufficient facts in Complaint ¶¶ 21-52 to support a Real Estate
2 Contract Forfeiture Act violation cause of action against Quality Loan
3 Defendants.

4 Second, in regard to service, R.C.W. § 61.30.140(2) requires, "such
5 an action shall be commenced by filing and serving the summons and
6 complaint not later than sixty days after the declaration of forfeiture
7 is recorded." The Declaration of Forfeiture was recorded on January 11,
8 2006. Plaintiff filed the instant Complaint on February 28, 2006;
9 accordingly, the Complaint was timely filed. Plaintiff submits he
10 served Quality Loan on March 8, 2006, and Mr. Ramirez on March 9, 2006;
11 Quality Loan Defendants do not challenge this. Accordingly, at this
12 stage, the Court finds Plaintiff complied with the statutory time
13 requirements.

14 Lastly, the Court finds Mr. Barbanti has not waived any right to
15 set aside the forfeiture action.⁴ The Real Estate Contract Forfeiture
16

17 ⁴ In response to Quality Loan Defendants' waiver argument,
18 Plaintiff filed a Motion to Strike Portions of Defendants' Brief in
19 Support of Motion for Summary Judgment (Ct. Rec. 40). The Court
20 agrees that Quality Loan Defendants' reference to *Schultz v. Werelius*,
21 60 Wash. App. 450 (1991), in support of their argument that Plaintiff
22 waived any right to bring this lawsuit by waiting until the
23 Declaration of Forfeiture was filed to bring suit was misleading given
24 that the Barbanti-Royal Pottage Enterprises Inc. Quitclaim Deed
25 occurred *prior* to the Declaration of Forfeiture being filed - unlike
26 the occurrence of events in *Schultz*. Accordingly, the Court grants
27 Plaintiff's motion to strike and disregards the citation to *Schultz*.

1 Act specifically gives a limited group of persons the ability to ask a
2 court to set aside a forfeiture, see R.C.W. § 61.30.140, and this right
3 is not dependant upon the individual presenting a challenge prior to the
4 declaration of forfeiture being recorded. *Id.* § 61.30.140(1).

5 For the above reasons, the Court **denies in part** Quality Loan
6 Defendants' motion, finding that Plaintiff may continue pursuing his
7 violation of the Real Estate Contract Forfeiture Act cause of action.

8 3. Unauthorized Practice of Law

9 Quality Loan Defendants ask the Court to dismiss Plaintiff's cause
10 of action asserting that they engaged in the unauthorized practice of
11 law. In Complaint ¶ 54, Plaintiff alleges that Quality Loan Defendants
12 prepared and executed the NOIF. In ¶ 55, Plaintiff explains that such
13 conduct constitutes the practice of law; and in ¶ 59 states that Quality
14 Loan Defendants are not licensed attorneys in the State of Washington.
15 Accordingly, the Court finds Plaintiff alleged sufficient facts to
16 survive a motion to dismiss on this cause of action. See *Bennion, Van*
17 *Camp, Hagen & Ruhl v. Kassler Escrow, Inc.*, 96 Wash. 2d 443, 446 (1981).

18 Quality Loan Defendants concede that Mr. Ramirez is not licensed to
19 practice law and that he prepared and executed the NOIF. Therefore, the
20 only remaining issue is whether Defendants' conduct constituted the
21 practice of law - a determination that is best left to the August 27,
22 2006, hearing, at which time the Court will hear Plaintiff's Motion for
23 Partial Summary Judgment Regarding the Unauthorized Practice of Law (Ct.
24 Rec. 54). A full record should be developed by that time as to what
25 exactly the Quality Loan Defendants did, and the legal arguments on
26

1 whether such acts constitutes the practice of law will be more fully
2 developed. Accordingly, the Court **denies** Quality Loan Defendants'
3 motion **in part**.

4 4. Washington Collection Agency Act, R.C.W. §§ 19.16 et seq.

5 Quality Loan Defendants contend (1) Plaintiff does not have
6 standing to assert a claim under the Washington Collection Agency Act
7 (WCAA), R.C.W. §§ 19.16 et seq., because he is not the owner of the
8 Property since ownership was transferred to Royal Pottage Enterprises,
9 Inc. and (2) the Court should find Quality Loan Defendants did not
10 violate R.C.W. §§ 19.16 et seq. as a matter of law because Defendant
11 Quality Loan is not a collection agency but is rather a trust company or
12 a loan/finance company - recognized exceptions to the definition of a
13 collection agency.

14 As discussed above, the Court finds Plaintiff alleged an injury-in-
15 fact which provides him with standing. Quality Loan Defendants do not
16 argue that Plaintiff failed to allege a violation of the WCAA, but
17 rather that they are not "collection agencies" and so Plaintiff cannot
18 maintain a WCAA against them. The question of whether Quality Loan
19 Defendants acted as a "collection agency," rather than as a trust
20 company or a loan/finance company is a question of fact that will be
21 better determined after the parties have engaged in discovery. The
22 Court **denies in part** Quality Loan Defendants' motion.

23 5. Consumer Protection Act, R.C.W. §§ 19.86 et seq.

24 Quality Loan Defendants argue the Court should dismiss Plaintiff's
25 Consumer Protection Act (CPA) cause of action because Plaintiff failed
26 to plead the statutory requirements and cannot establish (1) an unfair
27

1 or deceptive act or practice, (2) an act effecting an injury to property
2 or business, or (3) the public interest element. Also, again, Quality
3 Loan Defendants argue that Plaintiff lacks standing because he is not
4 the owner of the Property.

5 First, as ruled above, the Court finds Plaintiff has standing.
6 Next, to be successful on his CPA cause of action, Plaintiff must prove
7 (1) an unfair or deceptive act or practice, (2) occurring within trade
8 or business, (3) affecting the public interest, (4) injuring the
9 plaintiff's business or property, and (5) a cause relation between the
10 deceptive act and the resulting injury. *Robinson v. Avis Rent A Car*
11 *System, Inc.*, 106 Wash. App. 104 (2001); *Hangman Ridge Training Stables,*
12 *Inc. v. Safeco*, 105 Wash. 2d 778 (1986). The Court finds the following
13 allegations in the Complaint sufficiently state a CPA cause of action:

14 The unauthorized practice of law by Defendants Quality Loan,
15 Ramirez, Johnson, and OCWEN LLC violates RCW 2.48.170 *et seq*
16 and also violates the Consumer Protection Act (RCW 19.86 *et*
17 *seq*). The herein alleged acts by Defendants Quality Loan,
18 Ramirez, Johnson, and OCWEN LLC violate RCW Chapter 19.86 in
19 that these listed Defendants engaged in unfair and deceptive
acts and practices, in the conduct of trade or commerce, which
impacted the public interest, and caused injury to the
Plaintiff in his business and property in an amount to be
proven at trial, and there is a causal link between the unfair
and deceptive act and the injury suffered by the Plaintiff.

20 Complaint ¶ 61 (again reiterated at ¶ 72). Plaintiff also alleges that
21 Quality Loan is a collection agency doing business in Washington and,
22 while not licensed as such in Washington (*Id.* ¶¶ 4 & 11), it attempted
23 to collect a claim or debt under the Hooper-Barbanti contract which was
24 not owed by Plaintiff (*Id.* ¶¶ 15-16), and false statements were made
25 while attempting to collect the debt from Plaintiff (*Id.* ¶¶ 22-29). The
26 Complaint quite clearly contains all of the allegations necessary to
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1 support a CPA cause of action. The question of whether Plaintiff can
2 present sufficient facts to create a genuine issue for trial is a matter
3 for summary judgment. Therefore, the Court **denies in part** the motion.

4 6. Slander of Title

5 Quality Loan Defendants contend they have not slandered title to
6 the Property because Plaintiff has not pled malicious intent and also
7 cannot prove malicious intent on the part of Quality Loan Defendants.
8 Plus, Defendants argue Plaintiff does not have standing to assert a
9 slander of title claim because he is not the owner of the property.

10 First, as ruled above, the Court finds Plaintiff alleged a
11 sufficient injury-in-fact. Second, in order to bring a slander of title
12 action, Plaintiff must allege, and then later ultimately prove:

13 (1) false words; (2) maliciously published; (3) with reference
14 to some pending sale or purchase of property; (4) which go to
15 defeat plaintiff's title; and (5) result in plaintiff's
pecuniary loss.

16 *Rorvig v. Douglas*, 123 Wash. 2d 854, 859 (1994). After reviewing ¶¶ 73-
17 82 of the Complaint, the Court finds Plaintiff failed to plead malicious
18 intent. Accordingly, Quality Loan Defendants' motion to dismiss is
19 granted in part; however, the Court **grants Plaintiff leave to file an**
20 **amended Complaint within three weeks of entry of this Order** if he so
21 wishes to add a "malicious" allegation. See *Lopez v. Smith*, 203 F.3d
22 1122, 1130-31 (9th Cir. 2000).

23 7. Wrongful Interference with Contractual Relationship

24 Quality Loan Defendants also submit (a) Plaintiff does not have
25 standing to bring a wrongful contractual interference claim because he
26 is not the owner of the Property and (b) Plaintiff failed to plead that
27

1 there was a termination or a breach of Plaintiff's lease with his
2 tenant, that Quality Loan Defendants acted intentionally to interfere
3 with Plaintiff's lease, or that they had knowledge of Plaintiff's
4 contractual relationship with Plaintiff's tenant. Plaintiff highlights
5 that he brought the Wrongful Interference cause of action against
6 Defendant Ocwen and its purported agent/employee Greg Kelsey, and not
7 Quality Loan Defendants. Therefore, the Court **denies as moot in part**
8 Quality Loan Defendants' motion.

9 8. Damages

10 Lastly, Quality Loan Defendants argue Plaintiff cannot establish
11 that he suffered damages as a result of their conduct since he is not
12 the owner of the Property and thus could not have suffered any damages
13 as a result of the forfeiture action instituted by Quality Loan
14 Defendants. Plaintiff claims his contractual relationship with his
15 tenant has been damaged, along with the title that he was to pass to
16 Royal Pottage Enterprises, Inc. For the reasons discussed above under
17 "standing: injury-in-fact," the Court finds Plaintiff alleged sufficient
18 damages as a result of Quality Loan Defendants wrongful forfeiture --
19 whether he can ultimately prove such damages is an issue to be decided
20 later.

21 For the reasons given above, **IT IS HEREBY ORDERED:**

22 1. Defendants' Motion for Summary Judgment (**Ct. Rec. 18**) is
23 **CONSTRUED** as a Motion to Dismiss, and as such is **DENIED IN PART**
24 (Plaintiff has standing to sue and alleges sufficient facts to maintain
25 Real Estate Contract Forfeiture Act, Unauthorized Practice of Law,
26 Washington Collection Agency Act, and Washington Consumer Protection Act
27

1 causes of action), **DENIED AS MOOT IN PART** (Wrongful Interference with
2 Contractual Relationship cause of action), **and GRANTED IN PART**
3 (Plaintiff failed to plead the "malice" element for Slander of Title -
4 *however*, Plaintiff is allowed to file an amended complaint within three
5 weeks of entry of this Order to add an appropriate allegation).

6 2. Plaintiff's Motion to Strike Portions of Defendants' Brief in
7 Support of Motion for Summary Judgment (**Ct. Rec. 40**) is **GRANTED**.

8 **DATED** this 7th day of July 2006.

9
10 S/ Edward F. Shea
11 EDWARD F. SHEA
12 UNITED STATES DISTRICT JUDGE
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